

ESTTA Tracking number: **ESTTA465614**

Filing date: **04/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Chasing Fireflies, LLC
Granted to Date of previous extension	04/07/2012
Address	350 Midland Drive Seattle, WA 98188 UNITED STATES
Correspondence information	Chasing Fireflies, LLC Ryan Swanson & Cleveland 1201 Third Ave. Suite 3400 Seattle, WA 98101 UNITED STATES schachter@ryanlaw.com, ramirez@ryanlaw.com Phone:206-654-2272

Applicant Information

Application No	85398940	Publication date	02/07/2012
Opposition Filing Date	04/05/2012	Opposition Period Ends	04/07/2012
Applicant	Fantasma Toys, Inc. 421 7th Ave. New York, NY 10001 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. All goods and services in the class are opposed, namely: Toys, namely, plush toys, puppets, dolls and accessories therefor, doll carrying cases, balls for games, balls for sports, playground balls, action figures and accessories therefor; remote control toys, namely, vehicles, animals, insects, spiders; radio controlled toys, namely, vehicles, animals, insects, spiders; playing cards; playing card games; parlor games; fortune telling games; jigsaw and manipulative puzzles; cases for play accessories, namely, toy building structures; magic tricks and accessories therefor; hobby craft kits consisting of materials to construct magic tricks; magic toy sets consisting of materials for performing magic tricks; magic trick games; magic wands; novelty items, namely, tricks, toy glasses; party favors in the nature of small toys; and yo-yos
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Applicant Information

Application No	85399310	Publication date	02/07/2012
Opposition Filing Date	04/05/2012	Opposition Period Ends	
Applicant	Fantasma Toys, Inc.		

	421 7th Ave. New York, NY 10001 UNITED STATES
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Goods/Services Affected by Opposition


Class 016.

All goods and services in the class are opposed, namely: Arts and craft paint kits; Children's activity books; Children's books; Children's arts and crafts paper kits; Coloring books; Craft paper; Greeting cards; Note cards; Printed pamphlets, brochures, manuals, books, booklets, leaflets, flyers, informational sheets and newsletters, adhesive backed stickers, and kits comprising one or more of the foregoing materials in the field of fortune telling; Tarot cards; Trading cards


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3535068	Application Date	09/21/2007
Registration Date	11/18/2008	Foreign Priority Date	NONE
Word Mark	WISHCRAFT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/10/01 First Use In Commerce: 2007/10/01 Men's Women's and Children's clothing, namely, pants, shirts, tee shirts, sweaters, jackets, pajamas, robes, nightgowns, infant-wear, bathing suits, blouses, coats, dresses, skirts, vests, shorts, hats, scarves, boots, raincoats, knit tops, sweatshirts, knit bottoms, woven bottoms, jumpers, booties, masquerade costumes, socks, and swim cover-ups		

U.S. Registration No.	3435346	Application Date	09/21/2007
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	WISHCRAFT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2006/07/15 First Use In Commerce: 2006/10/01 Retail clothing store services; online retail store services featuring clothing; and mail order catalog services featuring clothing

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Wishcraft		
Goods/Services	Keepsake quality apparel, gifts, toys, accessories, costumes, and related children's items.		

Attachments	77285714#TMSN.jpeg (1 page)(bytes) 77286143#TMSN.jpeg (1 page)(bytes) CFOpposition.pdf (24 pages)(3876766 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/RAS/
Name	Chasing Fireflies, LLC
Date	04/05/2012

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8 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
9 BEFORE
10 THE TRADEMARK TRIAL AND APPEAL BOARD

11 In re Trademark Applications

12 Serial No.: 85398940 and
13 Serial No.: 85399310
14 Applicant: Fantasma Toys, Inc.
15 Filed: August 16, 2011
16 Published: February 7, 2012
17 Mark: WISHCRAFT

18 CHASING FIREFLIES LLC, a Washington limited
19 liability company,

20 Opposer/Registrant,

21 v.

22 FANTASMA TOYS, INC, a Delaware corporation,
23 Applicant.

NO.

**COMBINED NOTICES OF
OPPOSITION**

**Application No. 85398940 and
Application No. 85399310**

24 TO THE COMMISSIONER OF TRADEMARKS:

25 Opposer/Registrant Chasing Fireflies LLC (“Chasing Fireflies”) is a Washington
26 limited liability company with its principal place of business at 350 Midland Drive, Seattle,
WA 98188.

Chasing Fireflies believes it is and will be damaged if the registrations of the
trademark “WISHCRAFT,” Application Nos. 85398940 and 85399310 is permitted, and



1 hereby opposes the registration of the Applicant Fantasma Toys, Inc.'s trademarks in this
2 combined pleading.

3 As grounds for opposition, Chasing Fireflies alleges as follows:

4 1. Chasing Fireflies is the owner of Registration No. 3535068 for the trademark
5 "WISHCRAFT" in Class 25 for "Men's Women's and Children's clothing, namely, pants,
6 shirts, tee shirts, sweaters, jackets, pajamas, robes, nightgowns, infant-wear, bathing suits,
7 blouses, coats, dresses, skirts, vests, shorts, hats, scarves, boots, raincoats, knit tops,
8 sweatshirts, knit bottoms, woven bottoms, jumpers, booties, masquerade costumes, socks, and
9 swim cover-ups." This registration issued on November 18, 2008, with a date of first use of
10 October 10, 2007.

11 2. Chasing Fireflies is also the owner of Registration No. 3435346 for the service
12 mark "WISHCRAFT" in Class 35 for the services "Retail clothing store services; online retail
13 store services featuring clothing; and mail order catalog services featuring clothing." This
14 registration issued on May 27, 2008, with a date of first use of October 1, 2006.

15 3. True and correct printouts of the U.S. Patent and Trademark Office database
16 records for the Chasing Fireflies' registrations are attached hereto as Exhibit A.

17 4. Chasing Fireflies is one of the leading children's and family lifestyle
18 companies, offering keepsake-quality apparel, gifts, toys, accessories, and unique treasures
19 through both digital (online) commerce and traditional catalogue sales channels.

20 5. Chasing Fireflies' "WISHCRAFT" branded products are sold online through
21 its own websites (www.wishcraftcostumes.com and www.chasing-fireflies.com) and those of
22 authorized distributors or resellers such as Amazon.com.

23 6. In addition, Chasing Fireflies mailed over 14 million printed catalogues in
24 2011 alone, several editions of which prominently featured its "WISHCRAFT" trademark
25 across the front cover.
26

1 7. By way of example, a true and correct copy of the cover of the Halloween
2 2011 catalogue is attached as Exhibit B.

3 8. The catalogues and company website feature seasonally attuned costumes and
4 related accessories such as wands, wigs, capes, jewelry and hats, under the "WISHCRAFT"
5 brand and/or bearing a "WISHCRAFT" label.

6 9. Chasing Fireflies has grown rapidly and successfully since its founding in
7 2005, earning a place on Inc. Magazine's "Top 500 Fastest Growing Companies" for 2010
8 and 2011. Revenue has grown from \$10 million per year in 2007 to over \$30 million in 2011,
9 with sales of its "WISHCRAFT" branded toys, costumes, and children's holiday and fantasy
10 play accessories alone comprising over \$15 million in 2011.

11 10. In addition to its two valid and continuously used registered marks, Chasing
12 Fireflies has developed extensive common law rights relating to the brand "WISHCRAFT"
13 and many consumers understand the word "WISHCRAFT" to be a reference to the Chasing
14 Fireflies' products and services.

15 11. As stated in its application, Serial Number 85399310, the Applicant, Fantasma
16 Toys intends to use the identical proposed mark "WISHCRAFT" in Class 16 on "Arts and
17 craft paint kits; Children's activity books; Children's books; Children's arts and crafts paper
18 kits; Coloring books; Craft paper; Greeting cards; Note cards; Printed pamphlets, brochures,
19 manuals, books, booklets, leaflets, flyers, informational sheets and newsletters, adhesive
20 backed stickers, and kits comprising one or more of the foregoing materials in the field of
21 fortune telling; Tarot cards; Trading cards."

22 12. As stated in its application Serial Number 85398940, the Applicant Fantasma
23 Toys intends to use the identical proposed mark "WISHCRAFT" in Class 28 on "Toys,
24 namely, plush toys, puppets, dolls and accessories therefor, doll carrying cases, balls for
25 games, balls for sports, playground balls, action figures and accessories therefor; remote
26



1 control toys, namely, vehicles, animals, insects, spiders; radio controlled toys, namely,
2 vehicles, animals, insects, spiders; playing cards; playing card games; parlor games; fortune
3 telling games; jigsaw and manipulative puzzles; cases for play accessories, namely, toy
4 building structures; magic tricks and accessories therefor; hobby craft kits consisting of
5 materials to construct magic tricks; magic toy sets consisting of materials for performing
6 magic tricks; magic trick games; magic wands; novelty items, namely, tricks, toy glasses;
7 party favors in the nature of small toys; and yo-yos.”

8 13. True and correct copies of the of the U.S. Patent and Trademark Office
9 database records for the Fantasma Toys’ applications are attached hereto as Exhibit C.

10 14. As with Chasing Fireflies’ “WISHCRAFT” branded products, Fantasma Toy’s
11 proposed “WISHCRAFT” branded products are designed to appeal to children, although they
12 will be purchased by adults.

13 15. Fantasma Toys currently distributes its products through digital (online) portals,
14 including its own website and those of hobby shops, and distributors such as Amazon.com.
15 Fantasma also sells its products through its own “brick and mortar” retail outlet and in other
16 retailers and hobby shops that carry children’s toys, gifts and clothing, as well as magic shops.

17 16. On information and belief, Fantasma may seek wholesale distribution of its
18 “WISHCRAFT” products to mass market retailers such as Target or Wal-Mart, which would
19 in turn be offered through those retailer’s online websites.

20 17. The Applicant’s proposed marks are identical to Registrant’s previously
21 registered, currently and continuously used “WISHCRAFT” trademark and service marks.
22 Fantasma Toys’ proposed marks are highly likely to cause confusion and/or mistake and to
23 deceive the consuming public if they are permitted to be used on Fantasma Toy’s goods and
24 services.
25
26

1 18. The likelihood of confusion between the Chasing Fireflies registered marks
2 and the Applicant's proposed marks is anticipated to be particularly high given that many of
3 the Applicant's proposed products are identical or extremely similar to those currently offered
4 by Registrant; the marketing channels are identical or extremely similar in that both will be
5 offered online; and the target consumer is identical or extremely similar. As these children's
6 products are not expensive or complicated, and may be purchased as gifts, the purchasing
7 decision requires a very low level of sophistication and/or attention to detail by the consumer.

8 19. Because the Applicant's proposed marks are spelled, sound and look identical
9 to the Registrant's marks, the likelihood of confusion through online/digital channels of
10 distribution is especially high. Typing the word "WISHCRAFT" into an internet search
11 engine will inevitably lead to confusion as to the source or origin of a "WISHCRAFT"
12 product identified in a search result or Amazon.com recommendation, and to "initial interest"
13 confusion.

14 20. Applicant Fantasma Toys is impermissibly seeking to obtain for itself the
15 benefit of Registrant Chasing Fireflies' significant investment in the promotion of the
16 "WISHCRAFT" trademark and service marks, and association of that trademark with a high
17 quality, unique children's item.

18 21. If the Applicant is permitted to register and use "WISHCRAFT" the long-time
19 prior registrant and long-time prior user of the "WISHCRAFT" trademark and service mark,
20 Chasing Fireflies, will be damaged by lost sales, and lost licensing and assignment
21 opportunities both domestically and abroad.

22 22. Furthermore, Registrant Chasing Fireflies will suffer dilution of its mark,
23 which is well known among members of the relevant consuming public to represent the
24 highest quality goods and services for children and families. Chasing Fireflies will suffer
25 injury to its reputation, among other anticipated but difficult to quantify harms.
26



1 WHEREFORE, Opposer/Registrant Chasing Fireflies LLC prays that Fantasma Toys,
2 Inc.'s applications for Serial Number 85399310 and Serial Number 85398940 be denied, that
3 no registrations be issued to Applicant, and that this Combined Opposition be sustained in
4 favor of Chasing Fireflies.

5 DATED this 5th of April, 2012.

6
7 By: /RAS/
8 Robin A. Schachter
9 WSBA #23970
 Attorneys for Opposer/Registrant
 Chasing Fireflies, LLC

10 Ryan, Swanson & Cleveland, PLLC
11 1201 Third Avenue, Suite 3400
12 Seattle, Washington 98101-3034
13 Tel: (206) 464-4224
14 Fax: (206) 652-2972
15 Email: schachter@ryanlaw.com



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CERTIFICATE OF SERVICE

I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service, First Class Mail, postage prepaid, in an envelope addressed to Applicant and Applicant's counsel on this 5th day of April, 2012, addressed as follows:

Fantasma Toys, Inc.
421 Seventh Avenue
New York, NY 10021

Law Office of Scott Landsbaum
8306 Wilshire Blvd., Suite 420
Los Angeles, CA 90211

/RAS/
Robin A. Schachter

EXHIBIT A



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WISHCRAFT

Word Mark
Goods and
Services

WISHCRAFT

IC 035. US 100 101 102. G & S: Retail clothing store services; online retail store services featuring clothing; and mail order catalog services featuring clothing. FIRST USE: 20060715. FIRST USE IN COMMERCE: 20061001

Standard
Characters
ClaimedMark Drawing
Code

(4) STANDARD CHARACTER MARK

Serial Number

77286143

Filing Date

September 21, 2007

Filing Basis

1A

Original Filing
Basis

1A

Published for
Opposition

March 11, 2008

Registration
Number

3435346

Registration Date

May 27, 2008

Owner

(REGISTRANT) Chasing Fireflies, LLC LIMITED LIABILITY COMPANY WASHINGTON Suite. 100 811 S 192nd Street SeaTac WASHINGTON 98148

Attorney of
Record

Kevin J. Collette

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Live/Dead

Indicator LIVE

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WISHCRAFT

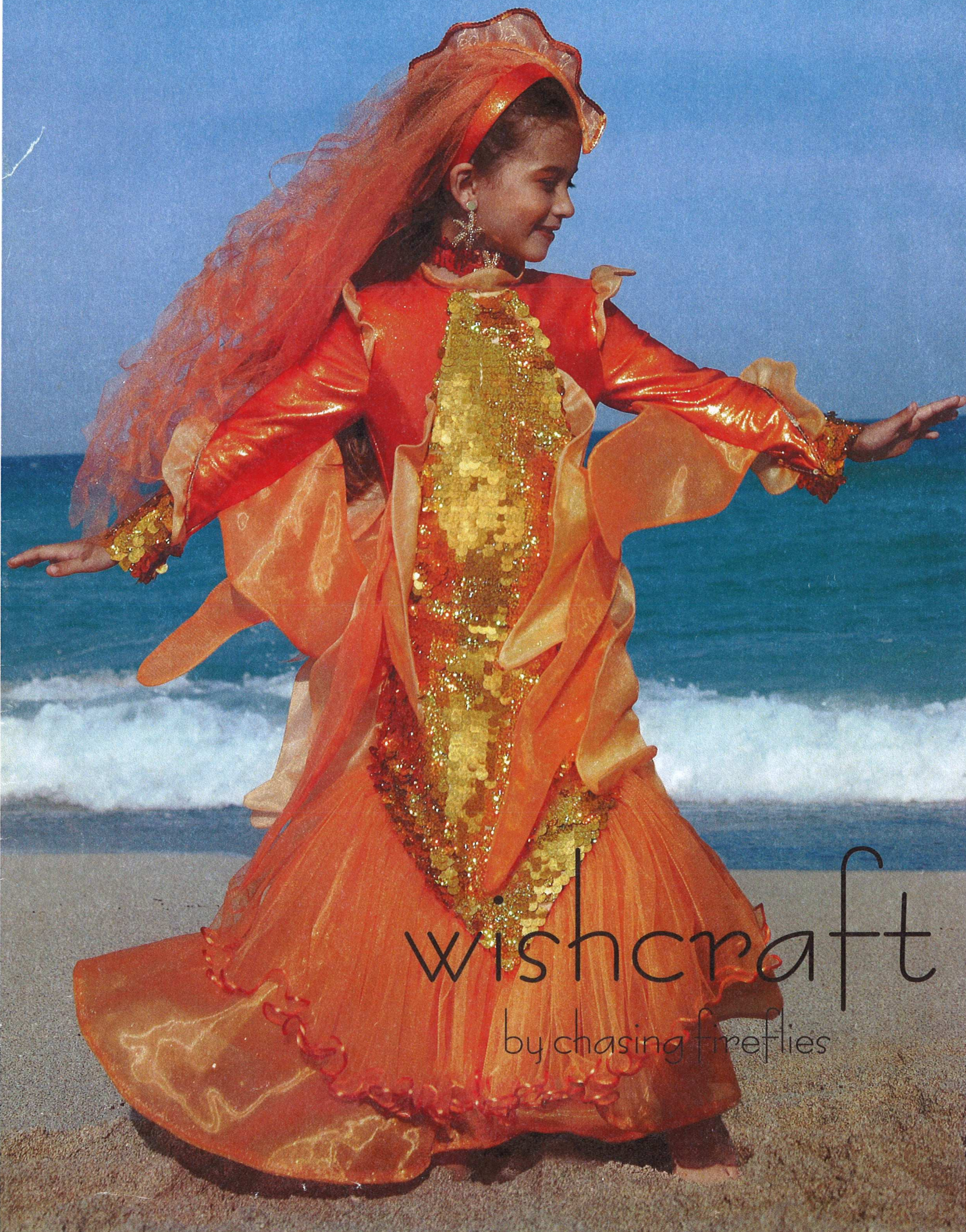
Word Mark	WISHCRAFT
Goods and Services	IC 025, US 022 039. G & S: Men's Women's and Children's clothing, namely, pants, shirts, tee shirts, sweaters, jackets, pajamas, robes, nightgowns, infant-wear, bathing suits, blouses, coats, dresses, skirts, vests, shorts, hats, scarves, boots, raincoats, knit tops, sweatshirts, knit bottoms, woven bottoms, jumpers, booties, masquerade costumes, socks, and swim cover-ups. FIRST USE: 20071001. FIRST USE IN COMMERCE: 20071001
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77285714
Filing Date	September 21, 2007
Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	March 11, 2008
Registration Number	3535068
Registration Date	November 18, 2008
Owner	(REGISTRANT) Chasing Fireflies, LLC LIMITED LIABILITY COMPANY WASHINGTON 350 Midland Dr Seattle WASHINGTON 98188
Attorney of Record	Kevin J. Collette

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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EXHIBIT B



wishcraft
by chasing fireflies

EXHIBIT C



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WISHCRAFT

Word Mark WISHCRAFT
Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: Arts and craft paint kits; Children's activity books; Children's books; Children's arts and crafts paper kits; Coloring books; Craft paper; Greeting cards; Note cards; Printed pamphlets, brochures, manuals, books, booklets, leaflets, flyers, informational sheets and newsletters, adhesive backed stickers, and kits comprising one or more of the foregoing materials in the field of fortune telling; Tarot cards; Trading cards

Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85399310
Filing Date August 16, 2011
Filing Basis 1B
Original Filing Basis 1B
Published for Opposition February 7, 2012
Owner (APPLICANT) Fantasma Toys, Inc. CORPORATION DELAWARE 421 7th Ave. New York NEW YORK 10001
Attorney of Record Scott Landsbaum
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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WISHCRAFT

Word Mark WISHCRAFT**Goods and Services** IC 028. US 022 023 038 050. G & S: Toys, namely, plush toys, puppets, dolls and accessories therefor, doll carrying cases, balls for games, balls for sports, playground balls, action figures and accessories therefor; remote control toys, namely, vehicles, animals, insects, spiders; radio controlled toys, namely, vehicles, animals, insects, spiders; playing cards; playing card games; parlor games; fortune telling games; jigsaw and manipulative puzzles; cases for play accessories, namely, toy building structures; magic tricks and accessories therefor; hobby craft kits consisting of materials to construct magic tricks; magic toy sets consisting of materials for performing magic tricks; magic trick games; magic wands; novelty items, namely, tricks, toy glasses; party favors in the nature of small toys; and yo-yos**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 85398940**Filing Date** August 16, 2011**Filing Basis** 1B**Original Filing Basis** 1B**Published for** February 7, 2012**Opposition****Owner** (APPLICANT) Fantasma Toys, Inc. CORPORATION DELAWARE 421 7th Ave. New York NEW YORK 10001

Attorney of
Record Scott Landsbaum
Type of Mark TRADEMARK
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WISHCRAFT

Word Mark WISHCRAFT

Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: Arts and craft paint kits; Children's activity books; Children's books; Children's arts and crafts paper kits; Coloring books; Craft paper; Greeting cards; Note cards; Printed pamphlets, brochures, manuals, books, booklets, leaflets, flyers, informational sheets and newsletters, adhesive backed stickers, and kits comprising one or more of the foregoing materials in the field of fortune telling; Tarot cards; Trading cards

Standard
Characters
Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85399310

Filing Date August 16, 2011

Filing Basis 1B

Original Filing
Basis 1BPublished for
Opposition February 7, 2012

Owner (APPLICANT) Fantasma Toys, Inc. CORPORATION DELAWARE 421 7th Ave. New York NEW YORK 10001

Attorney of
Record Scott Landsbaum

Type of Mark TRADEMARK

Register PRINCIPAL

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WISHCRAFT

Word Mark WISHCRAFT

Goods and Services IC 028, US 022 023 038 050. G & S: Toys, namely, plush toys, puppets, dolls and accessories therefor; doll carrying cases, balls for games, balls for sports, playground balls, action figures and accessories therefor; remote control toys, namely, vehicles, animals, insects, spiders; radio controlled toys, namely, vehicles, animals, insects, spiders; playing cards; playing card games; parlor games; fortune telling games; jigsaw and manipulative puzzles; cases for play accessories, namely, toy building structures; magic tricks and accessories therefor; hobby craft kits consisting of materials to construct magic tricks; magic toy sets consisting of materials for performing magic tricks; magic trick games; magic wands; novelty items, namely, tricks, toy glasses; party favors in the nature of small toys; and yo-yos

Standard Characters Claimed

Mark

Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85398940

Filing Date August 16, 2011

Filing Basis 1B

Original Filing Basis 1B

Published for February 7, 2012

Opposition

Owner (APPLICANT) Fantasma Toys, Inc. CORPORATION DELAWARE 421 7th Ave. New York NEW YORK 10001

Attorney of Record Scott Landsbaum
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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